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THE PROBLEM OF GERMAN TRIALS OF UNITED STATES AIRMEN

14 January 1944

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THE PROBLEM OF GERMAN TRIALS OF UNITED STATES AIRMEN

1. In announcing its intention to bring to trial American and British airmen, the German government may be assumed to have had the following objectives:

a. To weaken the United Nations by arousing Anglo-American opinion, public and official, against the USSR. The German statement indicated that the trial of airmen would be a "consequence" of the Kharkov trials.

b. To decrease the intensity of Allied air attacks directly by lowering the morale of bomber crews and indirectly by arousing American and English public opinion to protest the exposure of our airmen to unjust trial and punishment by the enemy.

c. To satisfy domestic desire for counter-measures against Allied air warfare.

2. It is unclear at present whether the German government intends to carry out the trials and if so at what time. Its threat was made on 22 December, three days after the close of the Kharkov trials, and was explicitly related for foreign consumption to that event. After an intensive propaganda campaign for both domestic and foreign consumption, the German propagandists have, since 3 January, made no mention of the question in either press or radio. Two possible factors explain the abandonment of agitation: (1) German military circles, notably the Luftwaffe Command, may have felt that fear of reprisals might reduce the morale of its already overstrained airmen. If Germany is concentrating her remaining bomber strength for a final attack on England at the opening of the invasion, considerations of crew morale could have contributed to the decision to abandon agitation for the present. (2) It may have been felt wiser to postpone them until a "last stand" propaganda drive to unify the home front becomes necessary.

Continued intensification of Allied air and ground attacks, however, combined with the consistent policy of the Nazis of implicating the whole German nation in acts of terror, may determine the German government to carry out the threatened trials in order to strengthen its domestic position

by transferring to the "barbaric" enemy the onus for its own inadequate defenses.

3. In the event of German trials and executions of Allied prisoners-of-war, our action in response must be directed (a) to prevent a repetition of the trials, and (b) to satisfy public indignation. Such action may take the form of either (a) immediate reprisals (b) later prosecution, under war crimes procedures, of those responsible for and participating in the trials.

a. Reprisals. Reprisals against war prisoners are specifically outlawed by the Geneva Convention, which the United States has firmly supported both before and since its entrance into the war. In the case of the manacling of prisoners after the Dieppe raid, the United States condemned German reprisals as contrary to the Convention. Its position was sustained even when Japan illegally "punished" American aviators.

Reprisals by the United States against prisoners would not only jeopardize the enemy's partial conformity to the Geneva Convention, but would stimulate the enemy to follow the first "trial" with further and more extensive ones. The spiral, thus begun, would quickly lead to the disintegration of all humane standards in the treatment of prisoners. Indeed the advocates of the trials in Germany would welcome reprisals and the opportunity for further retaliation which would implicate the German people in their own guilt.

Reprisals would, moreover, endanger the interest of the United States in the observance and enforcement of international law in the post-hostilities period and the validity of our policy and procedures for the prosecution of war criminals.

b. Action under War Crimes Procedure presents the only satisfactory alternative to reprisals. It would enable the United States to preserve its consistent policy of observing its treaty obligations, and would not jeopardize its stake in serving as an example to law-abiding conduct by other belligerents. A condemnation as war criminals of those who instituted

and carried out the perversion of justice, and a threat of their certain future prosecution may deter the enemy from further reprisals against prisoners, particularly if defeat is in sight. At the least it would not, like reprisals against enemy prisoners, produce further enemy retaliation as a matter of course.

4. The above procedure entails a postponement of justice. Such postponement may cause public anger to crystallise around the demand for immediate reprisals in kind. It is felt that this development could be prevented, and that popular indignation could be canalized into a demand for an even more implacable prosecution of the war. To that end, swift and decisive guidance must be given public sentiment the moment the news of German trials are announced. It would be essential that one of the nation's highest military leaders make a vigorous statement immediately after the announcement, embodying the following points:

(1) The action of the enemy comes as no surprise, and is wholly consonant with the way of life he seeks to impose upon us.

(2) He cannot be deterred from repeating the action by retaliation on our part, any more than we can be deterred from carrying the war into his territory.

(3) The only immediate answer to this outrage is greater and more devastating raids, and these we shall give them.

(4) All German officials responsible for or involved in this trial, whether directly or by chain of command, will be arraigned as war criminals and pay for their actions after the war.

(5) We must be prepared for more such trials in the future, but the fighting will of the American people is more than equal to such a test, and we will meet all such threats by an intensification of our military effort.

A series of German reprisal trials would present a more serious problem in satisfying an irate public opinion. The problem could not be wholly solved short of the defeat of Germany. It could be alleviated,

however, by

(1) a full statement of intention from the United Nations War Crimes Commission, indicating the nature and scope of the machinery by which it proposes to deal with those war criminals.

(2) a speech from the President giving American support to the above statement or, failing such a statement, delineating the American conception of justice which will be meted out to the guilty.

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SUMMARY AND CONCLUSIONS

1. Germany's threat of reprisal trials against prisoners of the air war was intended to arouse sentiment in the United States against the USSR, to demoralize Allied airmen's morale, and to provide the German people with a safe emotional outlet for its resentment against inadequate air defense. Although the Germans have ceased their agitation of the question for the present they cannot be assumed to have abandoned their intention.

2. Should the trials take place, the United States may respond either with reprisals in kind or with a firm declaration of intention to prosecute those involved in the trials directly and by chain of command.

3. Reprisals in kind would lead to a repetition of the German trials, would precipitate a general deterioration in standards of treatment of prisoners-of-war and would violate our obligations under the Geneva Convention. They would further jeopardize the principles of international law upon which our post-hostilities program of war criminals prosecution rests.

4. It is therefore believed that the first German reprisal trial should be met with a vigorous statement from the highest military quarters which will direct American public indignation at the atrocities into a determination to intensify its war effort, and which may deter German leadership from further trials. If the trials continue, the President and the War Crimes Commission could give concrete assurances on the progress of preparations to bring the malefactors to justice.